

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JAMES J. SILVA

v.

RHODE ISLAND FAMILY COURT, et. al.

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C.A. No. 04-170S

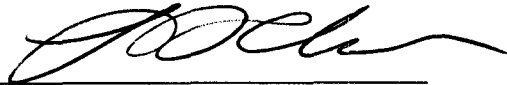
ORDER

This matter is before the Court on Petitioner James J. Silva's ("Petitioner") Motion for Indigent Transcript (Document No. 64) filed August 4, 2005. Petitioner requests a copy of the transcript of the hearing referred to in the Court's "May 27, 2005 Order/Judgement in a Civil Case."

On May 26, 2005 District Judge William E. Smith Ordered that Petitioner's Motion for Summary Judgment be denied, that the State's Motion to Dismiss be granted and that the Petition for Writ of Habeas Corpus be dismissed with prejudice. (Document No. 58). The following day, Judge Smith's Clerk entered a "Judgment in a Civil Case." (Document No. 59). That standard form provides for the Clerk to check a box indicating that judgment is entered either as a result of a "Jury Verdict" or as a result of "Decision by the Court." In the present case, the box was checked indicating that a decision was rendered by the Court. The form also includes standard language stating that the case came to "trial or hearing before the Court." It is apparently on the basis of this language that Petitioner has requested a transcript of the "hearing." As indicated in my Report and Recommendation to Judge Smith, I determined that no hearing was necessary to decide this case, and recommended that the Habeas Corpus Petition in this case be dismissed, as a matter of law, for failing to state a constitutional violation. Judge Smith accepted this Court's Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), after de novo review of the record and

consideration of Petitioner's Objection (Document No. 57), and entered his Order and Judgment based on the record before him at that time without conducting an independent hearing. In short, a hearing was not held before Judge Smith in C.A. No. 04-170S, and, therefore, Petitioner's request is DENIED as there is simply no hearing to be transcribed.

So ordered.

A handwritten signature in black ink, appearing to read 'L. Almond', written over a horizontal line.

LINCOLN D. ALMOND
United States Magistrate Judge
August 31, 2005